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March 17, 2003

**BY ELECTRONIC SUBMISSION**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, NW  
Washington, DC 20554

**Re: WC Docket No. 02-384; Notification of *Ex Parte***

Dear Ms. Dortch:

This letter provides notice of an oral *ex parte* communication between the Wireline Competition Bureau and Xspedius Management Co., LLC. Attendees from the Wireline Competition Bureau included Jeff Carlisle, Jeff Dygert, Rich Lerner, and Victoria Schlessinger. During the meeting, Xspedius discussed its comments in this proceeding and the attached materials. In accordance with the Commission's rules, this letter is being filed electronically in WC Docket No. 02-384. If you have any questions or need additional information, please contact me.

Sincerely,

/s/

Michael B. Hazzard

Counsel for Xspedius Management Co., LLC

cc: J. Carlisle (by electronic mail)  
J. Dygert (by electronic mail)  
R. Lerner (by electronic mail)  
V. Schlesinger (by electronic mail)

**X S P E D I U S**

*Accelerated Communications*

**WC Docket No. 02-384**

## The 271 Legal Standard

- The BOC at all times bears the burden of proof of compliance with section 271, even if no party challenges its compliance with a particular requirement . *SWBT Texas 271 Order*, 15 FCC Rcd at 18374, ¶ 46.
- In demonstrating its compliance, a BOC must show that
  - it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, *Bell Atlantic New York Order*, 15 FCC Rcd at 3973-74, ¶ 52), and
  - that it is currently furnishing, or is ready to furnish, the checklist items in quantities that competitors may reasonably demand and at an acceptable level of quality. *Id.*

## Checklist Item 13

- Section 271(c)(2)(B)(xiii) of the Act obligates Verizon to pay reciprocal compensation to Xspedius and other CLECs for the transport and termination of local voice traffic in accordance with section 252(d)(2).
- Pursuant to section 252(d)(2)(A), Verizon must compensate Xspedius for the costs associated with the transport and termination of calls that Verizon sends to Xspedius:
  - “[A]ll LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs’ network for termination.” *Virginia Arbitration Order*, ¶ 67.
  - The Commission’s implementing rules regarding reciprocal compensation expressly permit carriers, such as Xspedius, to recover from Verizon “the costs of the proportion of trunk capacity used by [Verizon] to send traffic” to Xspedius. 47 C.F.R. § 51.709(b).
- There is nothing new about this obligation.

## Verizon Cannot Satisfy Checklist Item 13

- In spite of a specific, concrete obligation, Verizon has refused to pay undisputed facilities charges for the transport and termination of local traffic, and therefore cannot satisfy checklist item 13.
- Verizon is currently in arrears on such payments in the amount of \$2,296,467.36. Verizon has submitted disputes totaling \$243,702.33, and accordingly owes Xspedius approximately \$2,052,765 in **undisputed** local interconnection transport charges.
- Verizon has never raised a legal or factual argument, other than the disputes just referenced, as to why it should not pay these charges. Verizon has paid these charges in the past, albeit often only after litigation.
- Xspedius has made repeated written demands for payment of these Maryland and D.C. charges in recent weeks but has not received payment.
- Without actual payment, Verizon cannot satisfy Checklist Item 13.

**Compliance requires obligation and performance –  
not obligation and a refusal to comply.**

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